

**POPCORN PROMOTION, RESEARCH, AND CONSUMER
INFORMATION ACT¹**

(7 U.S.C. 7481 - 7491)

SEC. 571. SHORT TITLE.

This subtitle may be cited as the “Popcorn Promotion, Research, and Consumer Information Act”. (7 U.S.C. 7401 note.)

SEC. 572. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.) Congress finds that)

(1) popcorn is an important food that is a valuable part of the human diet;

(2) the production and processing of popcorn plays a significant role in the economy of the United States in that popcorn is processed by several popcorn processors, distributed through wholesale and retail outlets, and consumed by millions of people throughout the United States and foreign countries;

(3) popcorn must be of high quality, readily available, handled properly, and marketed efficiently to ensure that the benefits of popcorn are available to the people of the United States;

(4) the maintenance and expansion of existing markets and uses and the development of new markets and uses for popcorn are vital to the welfare of processors and persons concerned with marketing, using, and producing popcorn for the market, as well as to the agricultural economy of the United States;

(5) the cooperative development, financing, and implementation of a coordinated program of popcorn promotion, research, consumer information, and industry information is necessary to maintain and expand markets for popcorn; and

(6) popcorn moves in interstate and foreign commerce, and popcorn that does not move in those channels of commerce directly burdens or affects interstate commerce in popcorn.

(b) POLICY.) It is the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this subtitle, of an orderly procedure for developing, financing (through adequate assessments on unpopped popcorn processed domestically), and

¹ Title V, Subtitle E, of the Federal Agriculture Improvement and Reform Act of 1996, Pub.L. 104-127, 110 Stat. 1074, Apr. 4, 1996.

carrying out an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to)

(1) strengthen the position of the popcorn industry in the marketplace; and

(2) maintain and expand domestic and foreign markets and uses for popcorn.

(c) PURPOSES.) The purposes of this subtitle are to)

(1) maintain and expand the markets for all popcorn products in a manner that)

(A) is not designed to maintain or expand any individual share of a producer or processor of the market;

(B) does not compete with or replace individual advertising or promotion efforts designed to promote individual brand name or trade name popcorn products; and

(C) authorizes and funds programs that result in government speech promoting government objectives; and

(2) establish a nationally coordinated program for popcorn promotion, research, consumer information, and industry information.

(d) STATUTORY CONSTRUCTION) -This subtitle treats processors equitably. Nothing in this subtitle)

(1) provides for the imposition of a trade barrier to the entry into the United States of imported popcorn for the domestic market; or

(2) provides for the control of production or otherwise limits the right of any individual processor to produce popcorn. (7 U.S.C. 7481.)

SEC. 573. DEFINITIONS.

In this subtitle (unless the context otherwise requires):

(1) BOARD.) The term “Board” means the Popcorn Board established under section 575(b).

(2) COMMERCE.) The term “commerce” means interstate, foreign, or intrastate commerce.

(3) CONSUMER INFORMATION.) The term “consumer information” means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of popcorn.

(4) DEPARTMENT.) The term “Department” means the Department of Agriculture.

(5) INDUSTRY INFORMATION.) The term “industry information” means information or a program that will lead to the development of)

(A) new markets, new marketing strategies, or increased efficiency for the popcorn industry; or

(B) activities to enhance the image of the popcorn industry.

(6) **MARKETING.)** The term “marketing” means the sale or other disposition of unpopped popcorn for human consumption in a channel of commerce, but does not include a sale or disposition to or between processors.

(7) **ORDER.)** The term “order” means an order issued under section 574.

(8) **PERSON.)** The term “person” means an individual, group of individuals, partnership, corporation, association, or cooperative, or any other legal entity.

(9) **POPCORN.)** The term “popcorn” means unpopped popcorn (Zea Mays L) that is)

(A) commercially grown;

(B) processed in the United States by shelling, cleaning, or drying; and

(C) introduced into a channel of commerce.

(10) **PROCESS.)** The term “process” means to shell, clean, dry, and prepare popcorn for the market, but does not include packaging popcorn for the market without also engaging in another activity described in this paragraph.

(11) **PROCESSOR.)** The term “processor” means a person engaged in the preparation of unpopped popcorn for the market who owns or shares the ownership and risk of loss of the popcorn and who processes and distributes over 4,000,000 pounds of popcorn in the market per year.

(12) **PROMOTION.)** The term “promotion” means an action, including paid advertising, to enhance the image or desirability of popcorn.

(13) **RESEARCH.)** The term “research” means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of popcorn.

(14) **SECRETARY.)** The term “Secretary” means the Secretary of Agriculture.

(15) **STATE.)** The term “State” means each of the 50 States and the District of Columbia.

(16) **UNITED STATES.)** The term “United States” means all of the States. (7 U.S.C. 7482.)

SEC. 574. ISSUANCE OF ORDERS.

(a) **IN GENERAL.)** To effectuate the policy described in section 572(b), the Secretary, subject to subsection (b), shall issue 1 or more orders applicable to processors. An order shall be applicable to all popcorn production and marketing areas in the United States. Not more than 1 order shall be in effect under this subtitle at any 1 time.

(b) **PROCEDURE.)**

(1) PROPOSAL OR REQUEST FOR ISSUANCE.) The Secretary may propose the issuance of an order, or an association of processors or any other person that would be affected by an order may request the issuance of, and submit a proposal for, an order.

(2) NOTICE AND COMMENT CONCERNING PROPOSED ORDER.) Not later than 60 days after the receipt of a request and proposal for an order under paragraph (1), or at such time as the Secretary determines to propose an order, the Secretary shall publish a proposed order and give due notice and opportunity for public comment on the proposed order.

(3) ISSUANCE OF ORDER.) After notice and opportunity for public comment under paragraph (2), the Secretary shall issue an order, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order conforms to this subtitle. The order shall be issued and become effective not later than 150 days after the date of publication of the proposed order.

(c) AMENDMENTS.) The Secretary, as appropriate, may amend an order. The provisions of this subtitle applicable to an order shall be applicable to any amendment to an order, except that an amendment to an order may not require a referendum to become effective. (7 U.S.C. 7483.)

SEC. 575. REQUIRED TERMS IN ORDERS.

(a) IN GENERAL.) An order shall contain the terms and conditions specified in this section.

(b) ESTABLISHMENT AND MEMBERSHIP OF POPCORN BOARD.)

(1) IN GENERAL.) The order shall provide for the establishment of, and appointment of members to, a Popcorn Board that shall consist of not fewer than 4 members and not more than 9 members.

(2) NOMINATIONS.) The members of the Board shall be processors appointed by the Secretary from nominations submitted by processors in a manner authorized by the Secretary, subject to paragraph (3). Not more than 1 member may be appointed to the Board from nominations submitted by any 1 processor.

(3) GEOGRAPHICAL DIVERSITY.) In making appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of popcorn production throughout the United States.

(4) TERMS.) The term of appointment of each member of the Board shall be 3 years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 2, 3, and 4 years, as determined by the Secretary.

(5) COMPENSATION AND EXPENSES.) A member of the Board shall serve without compensation, but shall be reimbursed for the expenses of the member incurred in the performance of duties for the Board.

(c) POWERS AND DUTIES OF BOARD.) The order shall define the powers and duties of the Board, which shall include the power and duty)

(1) to administer the order in accordance with the terms and provisions of the order;

(2) to issue regulations to effectuate the terms and provisions of the order;

(3) to appoint members of the Board to serve on an executive committee;

(4) to propose, receive, evaluate, and approve budgets, plans, and projects of promotion, research, consumer information, and industry information, and to contract with appropriate persons to implement the plans or projects;

(5) to accept and receive voluntary contributions, gifts, and market promotion or similar funds;

(6) to invest, pending disbursement under a plan or project, funds collected through assessments authorized under subsection (f), only in)

(A) obligations of the United States or an agency of the United States;

(B) general obligations of a State or a political subdivision of a State;

(C) an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(D) obligations fully guaranteed as to principal and interest by the United States;

(7) to receive, investigate, and report to the Secretary complaints of violations of the order; and

(8) to recommend to the Secretary amendments to the order.

(d) PLANS AND BUDGETS.)

(1) IN GENERAL.) The order shall provide that the Board shall submit to the Secretary for approval any plan or project of promotion, research, consumer information, or industry information.

(2) BUDGETS.) The order shall require the Board to submit to the Secretary for approval budgets on a fiscal year basis of the anticipated expenses and disbursements of the Board in the implementation of the order, including projected costs of plans and projects of promotion, research, consumer information, and industry information.

(e) CONTRACTS AND AGREEMENTS.)

(1) IN GENERAL.) The order shall provide that the Board may enter into contracts or agreements for the implementation and carrying out of plans or projects of promotion, research, consumer information, or industry information, including contracts with a processor organization, and for the payment of the cost of the plans or projects with funds collected by the Board under the order.

(2) REQUIREMENTS.) A contract or agreement under paragraph (1) shall provide that)

(A) the contracting party shall develop and submit to the Board a plan or project, together with a budget that shows the estimated costs to be incurred for the plan or project;

(B) the plan or project shall become effective on the approval of the Secretary; and

(C) the contracting party shall keep accurate records of each transaction of the party, account for funds received and expended, make periodic reports to the Board of activities conducted, and make such other reports as the Board or the Secretary may require.

(3) PROCESSOR ORGANIZATIONS.) The order shall provide that the Board may contract with processor organizations for any services required in addition to the services described in paragraph (1). The contract shall include provisions comparable to the provisions required by paragraph (2).

(f) ASSESSMENTS.)

(1) PROCESSORS.) The order shall provide that each processor marketing popcorn in the United States or for export shall, in the manner prescribed in the order, pay assessments and remit the assessments to the Board.

(2) DIRECT MARKETERS.) A processor that markets popcorn produced by the processor directly to consumers shall pay and remit the assessments on the popcorn directly to the Board in the manner prescribed in the order.

(3) RATE.)

(A) IN GENERAL.) The rate of assessment prescribed in the order shall be a rate established by the Board but not more than \$.08 per hundredweight of popcorn.

(B) ADJUSTMENT OF RATE.) The order shall provide that the Board, with the approval of the Secretary, may raise or lower the rate of assessment annually up to a maximum of \$.08 per hundredweight of popcorn.

(4) USE OF ASSESSMENTS.)

(A) IN GENERAL.) Subject to subparagraphs (B) and (C) and subsection (c)(5), the order shall provide that the assessments collected shall be used by the Board)

(i) to pay expenses incurred in implementing and administering the order, with provision for a reasonable reserve; and

(ii) to cover such administrative costs as are incurred by the Secretary, except that the administrative costs incurred by the Secretary (other than any legal expenses incurred to defend and enforce the order) that may be reimbursed by the Board may not exceed 15 percent of the projected annual revenues of the Board.

(B) EXPENDITURES BASED ON SOURCE OF ASSESSMENTS.) In implementing plans and projects of promotion, research, consumer information, and industry information, the Board shall expend funds on)

(i) plans and projects for popcorn marketed in the United States or Canada in proportion to the amount of assessments collected on domestically marketed popcorn; and

(ii) plans and projects for exported popcorn in proportion to the amount of assessments collected on exported popcorn.

(C) NOTIFICATION.) If the administrative costs incurred by the Secretary that are reimbursed by the Board exceed 10 percent of the projected annual revenues of the Board, the Secretary shall notify as soon as practicable the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(g) PROHIBITION ON USE OF FUNDS.) The order shall prohibit any funds collected by the Board under the order from being used to influence government action or policy, other than the use of funds by the Board for the development and recommendation to the Secretary of amendments to the order.

(h) BOOKS AND RECORDS OF THE BOARD.) The order shall require the Board to)

(1) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may prescribe;

(2) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(3) account for the receipt and disbursement of all funds entrusted to the Board.

(i) BOOKS AND RECORDS OF PROCESSORS)

(1) MAINTENANCE AND REPORTING OF INFORMATION.) The order shall require that each processor of popcorn for the market shall)

(A) maintain, and make available for inspection, such books and records as are required by the order; and

(B) file reports at such time, in such manner, and having such content as is prescribed in the order.

(2) USE OF INFORMATION.) The Secretary shall authorize the use of information regarding processors that may be accumulated under a law or regulation other than this subtitle or a regulation issued under this subtitle. The information shall be made available to the Secretary as appropriate for the administration or enforcement of this subtitle, the order, or any regulation issued under this subtitle.

(3) CONFIDENTIALITY.)

(A) IN GENERAL.) Subject to subparagraphs (B), (C), and (D), all information obtained by the Secretary under paragraphs (1) and (2)

shall be kept confidential by all officers, employees, and agents of the Board and the Department.

(B) DISCLOSURE BY SECRETARY.) Information referred to in subparagraph (A) may be disclosed if)

- (i) the Secretary considers the information relevant;
- (ii) the information is revealed in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party; and
- (iii) the information relates to the order.

(C) DISCLOSURE TO OTHER AGENCY OF FEDERAL GOVERNMENT.)

(i) IN GENERAL.) No information obtained under the authority of this subtitle may be made available to another agency or officer of the Federal Government for any purpose other than the implementation of this subtitle and any investigatory or enforcement activity necessary for the implementation of this subtitle.

(ii) PENALTY.) A person who knowingly violates this subparagraph shall, on conviction, be subject to a fine of not more than \$1,000 or to imprisonment for not more than 1 year, or both, and if an officer, employee, or agent of the Board or the Department, shall be removed from office or terminated from employment, as applicable.

(D) GENERAL STATEMENTS.) Nothing in this paragraph prohibits)

(i) the issuance of general statements based on the reports of a number of persons subject to an order or statistical data collected from the reports, if the statements do not identify the information provided by any person; or

(ii) the publication, by direction of the Secretary, of the name of a person violating the order, together with a statement of the particular provisions of the order violated by the person.

(j) OTHER TERMS AND CONDITIONS.) The order shall contain such other terms and conditions, consistent with this subtitle, as are necessary to effectuate this subtitle, including regulations relating to the assessment of late payment charges. (7 U.S.C. 7484.)

SEC. 576. REFERENDA.

(a) INITIAL REFERENDUM.)

(1) IN GENERAL.) Within the 60-day period immediately preceding the effective date of an order, as provided in section 574(b)(3), the Secretary shall conduct a referendum among processors who, during a representative period as determined by the Secretary, have been engaged in processing, for the purpose of ascertaining whether the order shall go into effect.

(2) APPROVAL OF ORDER.) The order shall become effective, as provided in section 574(b), only if the Secretary determines that the order has been approved by not less than a majority of the processors voting in the referendum and if the majority processed more than 50 percent of the popcorn certified as having been processed, during the representative period, by the processors voting.

(b) ADDITIONAL REFERENDA.)

(1) IN GENERAL.) Not earlier than 3 years after the effective date of an order approved under subsection (a), on the request of the Board or a representative group of processors, as described in paragraph (2), the Secretary may conduct additional referenda to determine whether processors favor the suspension or termination of the order.

(2) REPRESENTATIVE GROUP OF PROCESSORS.) An additional referendum on an order shall be conducted if the referendum is requested by 30 percent or more of the number of processors who, during a representative period as determined by the Secretary, have been engaged in processing.

(3) DISAPPROVAL OF ORDER.) If the Secretary determines, in a referendum conducted under paragraph (1), that suspension or termination of the order is favored by at least 2/3 of the processors voting in the referendum, the Secretary shall)

(A) suspend or terminate, as appropriate, collection of assessments under the order not later than 180 days after the date of determination; and

(B) suspend or terminate the order, as appropriate, in an orderly manner as soon as practicable after the date of determination.

(c) COSTS OF REFERENDUM.) The Secretary shall be reimbursed from assessments collected by the Board for any expenses incurred by the Secretary in connection with the conduct of any referendum under this section.

(d) METHOD OF CONDUCTING REFERENDUM.) Subject to this section, a referendum conducted under this section shall be conducted in such manner as is determined by the Secretary.

(e) CONFIDENTIALITY OF BALLOTS AND OTHER INFORMATION.)

(1) IN GENERAL.) The ballots and other information or reports that reveal or tend to reveal the vote of any processor, or any business operation of a processor, shall be considered to be strictly confidential and shall not be disclosed.

(2) PENALTY FOR VIOLATIONS.) An officer or employee of the Department who knowingly violates paragraph (1) shall be subject to the penalties described in section 575(i)(3)(C)(ii). (7 U.S.C. 7485.)

SEC. 577. PETITION AND REVIEW.

(a) PETITION.)

(1) **IN GENERAL.)** A person subject to an order may file with the Secretary a petition)

(A) stating that the order, a provision of the order, or an obligation imposed in connection with the order is not established in accordance with law; and

(B) requesting a modification of the order or obligation or an exemption from the order or obligation.

(2) **STATUTE OF LIMITATIONS.)** A petition under paragraph (1) concerning an obligation may be filed not later than 2 years after the date of imposition of the obligation.

(3) **HEARINGS.)** The petitioner shall be given the opportunity for a hearing on a petition filed under paragraph (1), in accordance with regulations issued by the Secretary.

(4) **RULING.)** After a hearing under paragraph (3), the Secretary shall issue a ruling on the petition that is the subject of the hearing, which shall be final if the ruling is in accordance with applicable law.

(b) REVIEW.)

(1) **COMMENCEMENT OF ACTION.)** The district court of the United States for any district in which a person who is a petitioner under subsection (a) resides or carries on business shall have jurisdiction to review a ruling on the petition, if the person files a complaint not later than 20 days after the date of issuance of the ruling under subsection (a)(4).

(2) **PROCESS.)** Service of process in a proceeding under paragraph (1) may be made on the Secretary by delivering a copy of the complaint to the Secretary.

(3) **REMANDS.)** If the court determines, under paragraph (1), that a ruling issued under subsection (a)(4) is not in accordance with applicable law, the court shall remand the matter to the Secretary with directions)

(A) to make such ruling as the court shall determine to be in accordance with law; or

(B) to take such further proceedings as, in the opinion of the court, the law requires.

(c) **ENFORCEMENT.)** The pendency of proceedings instituted under subsection (a) may not impede, hinder, or delay the Secretary or the Attorney General from taking action under section 578. (7 U.S.C. 7486.)

SEC. 578. ENFORCEMENT.

(a) **IN GENERAL.)** The Secretary may issue an enforcement order to restrain or prevent any person from violating an order or regulation issued under this subtitle and may assess a civil penalty of not more than \$1,000 for each violation of the enforcement order, after an opportunity for an administrative hearing, if the Secretary determines that the administration and enforcement of the order and this subtitle would be adequately served by such a procedure.

(b) **JURISDICTION.)** The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, an order or regulation issued under this subtitle.

(c) **REFERRAL TO ATTORNEY GENERAL.)** A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action. (7 U.S.C. 7487.)

SEC. 579. INVESTIGATIONS AND POWER TO SUBPOENA.

(a) **INVESTIGATIONS.)** The Secretary may make such investigations as the Secretary considers necessary)

(1) for the effective administration of this subtitle; and

(2) to determine whether any person subject to this subtitle has engaged, or is about to engage, in an act that constitutes or will constitute a violation of this subtitle or of an order or regulation issued under this subtitle.

(b) **OATHS, AFFIRMATIONS, AND SUBPOENAS.)** For the purpose of an investigation under subsection (a), the Secretary may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of records may be required from any place in the United States.

(c) **AID OF COURTS.)**

(1) **REQUEST.)** In the case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may request the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is carried on, or where the person resides or carries on business, in requiring the attendance and testimony of the person and the production of records.

(2) **ENFORCEMENT ORDER OF THE COURT.)** The court may issue an enforcement order requiring the person to appear before the Secretary to produce records or to give testimony concerning the matter under investigation.

(3) CONTEMPT.) A failure to obey an enforcement order of the court under paragraph (2) may be punished by the court as a contempt of the court.

(4) PROCESS.) Process in a case under this subsection may be served in the judicial district in which the person resides or carries on business or wherever the person may be found. (7 U.S.C. 7488.)

SEC. 580. RELATION TO OTHER PROGRAMS.

Nothing in this subtitle preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State. (7 U.S.C. 7489.)

SEC. 581. REGULATIONS.

The Secretary may issue such regulations as are necessary to carry out this subtitle. (7 U.S.C. 7490.)

SEC. 582. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this subtitle. Amounts made available under this section or otherwise made available to the Department, and amounts made available under any other marketing or promotion order, may not be used to pay any administrative expense of the Board. (7 U.S.C. 7491.)